

**Written Statement to the Wisconsin
Assembly Committee on Campaigns and Elections**

Legislative Hearing on 2023 Assembly Bill 563
January 9, 2024

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About the Author

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*The Manhattan Institute does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my research as an Institute scholar, the views represented today are solely my own, not my employer's.

Testimony

I thank the Assembly Committee on Campaigns and Elections for the honor and opportunity of providing this testimony on 2023 Assembly Bill 563, and electoral reforms such as ranked-choice voting (RCV) and Final-Five voting (FFV). No single electoral system is ideal for every jurisdiction and elected office. States and localities should decide each system's tradeoffs in light of their voters' preferences and values. Within the framework of the United States' federalist system of government, voters can choose from a wide range of reasonable electoral systems, subject to constitutional and federal statutory constraints.

Wisconsinites and their lawmakers must carefully consider the tradeoffs of each electoral system, ensuring that the chosen system accurately represents majority preferences and encourages meaningful democratic participation for political minorities. My testimony aims to provide some clarity in this decision-making process and describe some of New York City's experiences following its 2019 adoption of single-winner RCV for local primary and special elections.

It is critical that these deliberations keep ranked-choice voting analytically distinct from Final-Five voting. Though FFV necessarily entails the use of one form of RCV for general elections, RCV may be implemented as a standalone replacement for the voting system used in primary and general elections in Wisconsin and elsewhere. FFV, by contrast, is a more ambitious and comprehensive reform than RCV alone, one that mandates a specific structure for primary and general elections.

Understanding Ranked-Choice Voting

Multiple forms of ranked-choice voting exist, making it more of an umbrella concept. For example, RCV can be used to elect the winner in single-member districts, with the most commonly used variant (including the one under consideration in Assembly Bill 563) known as "instant-runoff voting" (IRV).¹ But it may also be used in multi-seat districts in a multi-winner form called the "single transferable vote" (STV).²

RCV may, moreover, be used in primary elections, general elections, or both.³ Maine, for example, uses IRV in both primary and general elections for federal legislative races, whereas New York City's use of IRV is limited to closed primary and special elections for local offices.⁴

IRV aims to address the shortcomings of the widely used plurality (or "first-past-the-post" (FPTP)) voting system. Under plurality voting, including in Wisconsin, the candidate with the highest number of votes wins, even without securing a majority.⁵ In plurality voting with three or

¹ MIT Election Data + Science Lab, "Instant runoff voting," MIT (Apr. 25, 2023), <https://electionlab.mit.edu/research/instant-runoff-voting>.

² See ELECTORAL REFORM SOCIETY, WHAT IS STV? 1–2 (2018), <https://www.electoral-reform.org.uk/wp-content/uploads/2017/06/What-is-STV.pdf>.

³ FairVote, "Forms of Ranked Choice Voting," (Nov. 2022), <https://fairvote.org/wp-content/uploads/2022/11/Forms-of-RCV.pdf>.

⁴ *Id.*

⁵ ELECTORAL REFORM SOCIETY, WHAT IS STV? 1 (2018).

more candidates, votes may be split among two ideologically similar candidates, inadvertently improving the chances of electing their voters' least-favorite candidate. This leads to the "spoiler effect," where voters might not choose their preferred candidate, but instead vote strategically for the least-objectionable candidate they believe is most likely to win.⁶ This helps major-party candidates secure election, while discouraging minor-party and independent candidates from competing.

By contrast, under IRV, the winner obtains a majority of final-round votes. In an IRV contest with three or more candidates, if no candidate receives a majority of first-preference votes, the last-place candidate is eliminated, and the candidate's votes are reallocated to the next-highest preferences indicated on his or her voters' ballots.⁷ This process repeats until a winner emerges with a majority of the final-round votes.⁸

If voters do not rank any remaining candidates in the final round of voting, their vote does not count in that decisive round (known as "ballot exhaustion").⁹ Therefore, the winning candidate might not have a majority of the total ballots cast, but will secure a majority of the final-round votes.¹⁰ Although ballot exhaustion is a concerning aspect of RCV systems, it is worth noting that it may be ameliorated through intensive voter-education efforts.¹¹ In some cases, exhaustion may be intentional, as when voters select only one candidate because they only wish to see that candidate elected and have no view about any others.¹²

While RCV methods do not entirely eliminate strategic voting,¹³ they significantly reduce incentives for strategic voting present in plurality voting. Voters most often choose to rank candidates closest to their views highest, but also include a candidate with a high probability of winning somewhere among their rankings.¹⁴ This substantially reduces the chances that selecting their favorite candidate will contribute to the election of a less-preferred candidate. As a result, RCV should theoretically encourage more third-party and independent candidates to run.

⁶ Rachel Hutchinson, *Defining the Spoiler Effect*, FAIRVOTE (Jan. 25, 2023), <https://fairvote.org/defining-the-spoiler-effect/>.

⁷ MIT Election Data + Science Lab, *supra* note 1.

⁸ *Id.*

⁹ See FairVote, *RCV Elections and Runoffs: Exhausted Votes vs Exhausted Voters in the Bay Area*, (Oct. 19, 2016), https://fairvote.org/rcv_elections_and_runoffs_exhausted_votes_vs_exhausted_voters_in_the_bay_area/ ("In RCV, ballot exhaustion occurs when all the candidates a voter ranked have lost even though two or more other candidates remain in the race. This might happen because a voter chose not to rank all or many candidates or because a voter ranked as many candidates as allowed on the ballot paper (in the Bay Area this is three candidates). Since such a vote contains no rankings of a candidate still in the race, it is allowed to exhaust and is no longer included in the tally for winner.").

¹⁰ Craig M. Burnett & Vladimir Kogan, *Ballot (and Voter) "Exhaustion" Under Instant Runoff Voting: An Examination of Four Ranked-Choice Elections*, 37 ELECTORAL STUD. 41 (2015).

¹¹ LEE DRUTMAN & MARESA STRANO, EVALUATING THE EFFECTS OF RANKED-CHOICE VOTING 9, 66–67 (2022), https://d1y8sb8igg2f8e.cloudfront.net/documents/Evaluating_the_Effects_of_Ranked-Choice_Voting.pdf.

¹² NYC VOTES, 2021–2022 VOTER ANALYSIS REPORT 73, 94 (2022) https://www.nyccfb.info/pdf/2021-2022_VoterAnalysisReport.pdf.

¹³ The Center for Election Science, *The Spoiler Effect*, (last visited Jan. 5, 2024), <https://electionscience.org/library/the-spoiler-effect/>.

¹⁴ See LEE DRUTMAN & MARESA STRANO, WHAT WE KNOW ABOUT RANKED-CHOICE VOTING 49 (2021), <https://www.newamerica.org/political-reform/reports/what-we-know-about-ranked-choice-voting/>.

Maine, for example, saw independent candidates run in its congressional races in 2018 and 2022,¹⁵ as well as its U.S. Senate races in 2018 (an incumbent independent)¹⁶ and 2020.¹⁷ That could, however, be explained by Maine’s long and idiosyncratic history of electing independents.¹⁸ And as Lee Drutman and Maresa Strano of New America explain, prospective candidates in Maine did not fully understand the benefits of IRV; some chose not to run because they did not want to spoil the election.¹⁹ Their research also found that many American voters strongly disapprove of outcomes in which the runner-up from the first round of voting wins in the second round, known as “come-from-behind” victories (theoretically, one of the main advantages associated with ranked-choice voting).²⁰ These results suggest that a robust educational campaign is necessary for voters and candidates to understand and appreciate the benefits of IRV.

New York City’s Experience with Instant-Runoff Voting

In 2019, New York City voters approved a revision to the city charter that introduced IRV for primary and special elections for local offices like mayor and city council, which was first utilized in June 2021.²¹ General elections are still conducted using a traditional single-choice vote using plurality-winner rules.²²

Thus far, the results are far from transformative. New York’s lack of political competition and poor voter turnout are essentially unchanged after two elections under the new voting system. IRV was simply integrated within the city and state’s existing electoral architecture: single-member council districts, fully closed primaries, and elections held on odd-numbered years, which generally discourage robust political competition. Local general elections are, as before, effectively decided in the low-turnout Democratic primary, except one that now uses IRV.

IRV has done little to boost turnout in New York City local races. Consider that in the 2021 mayoral primary, the first without an incumbent since 2013, only 26.5 percent of eligible New Yorkers voted in the ranked-choice primary.²³ This was higher than recent past primaries, but only by a relatively slim margin. In the comparable 2013 mayoral primary, for example, 23.3 percent of eligible primary voters participated.²⁴ Last June’s city-council primaries had even

¹⁵ Ballotpedia, *Maine’s 2nd Congressional District election, 2022*, (last visited Jan. 5, 2024), https://ballotpedia.org/Maine%27s_2nd_Congressional_District_election_2022.

¹⁶ Ballotpedia, *Maine elections, 2018*, (last visited Jan. 5, 2024), https://ballotpedia.org/Maine_elections_2018.

¹⁷ Ballotpedia, *United States Senate election in Maine, 2020*, (last visited Jan. 5, 2024), https://ballotpedia.org/United_States_Senate_election_in_Maine_2020.

¹⁸ See, e.g., Micah Cohen, In Maine, Independent Streak Complicates Political Landscape, *FiveThirtyEight* (Oct. 15, 2012, 1:37 PM), <https://fivethirtyeight.com/features/in-maine-independent-streak-complicates-political-landscape/>.

¹⁹ DRUTMAN & STRANO, *supra* note 11, at 64.

²⁰ *Id.* at 61–62.

²¹ New York City Board of Elections, *Learn about Ranked Choice Voting for NYC Local Elections*, <https://vote.nyc/page/ranked-choice-voting>; NYC VOTES, *supra* note 12, at 7.

²² NYC VOTES, *supra* note 12, at 18.

²³ *Id.* at vii.

²⁴ *Id.* at 45.

worse turnout, in or near the single digits for many districts, and in line with earlier city-council contests.²⁵

Neither has IRV alone spurred greater political competition. Today, one party still controls nearly 90 percent of city-council seats and the three major citywide offices of mayor, comptroller, and public advocate.²⁶ If there is any political competition to speak of, it is almost entirely found within the local Democratic Party.²⁷ In short, simply allowing voters to rank their preferences has not—and cannot—alone introduce genuine political competition to New York City, given the other structural elements that insulate the dominant political party from outside challenges.

Research indicates that in other jurisdictions where it has been introduced as a standalone reform, ranked-choice voting has not fundamentally altered political dynamics. Evidence on its effects on voter turnout is mixed, with little to suggest that it leads to substantial increases in voter participation.²⁸ In a New America report discussing the results of 15 papers on the effects of RCV, Lee Drutman and Maresa Strano found a pattern of “null to small” effects.²⁹ Most of these papers suggest it is a modest procedural change, a “comparable or modestly better alternative” to plurality, or first-past-the-post, voting.³⁰ Their report sums up the matter succinctly:³¹

[R]eplacing FPTP with RCV without addressing the other structural drivers of America’s hyperpolarized and inequitable two-party system, including single-member districts, is unlikely to bring about the large-scale change we need to repair our national political dysfunction. Put another way, adopting RCV will not hurt as much as you might fear, but it may not help as much as you might hope.

The lack of political competition in American elections, which IRV cannot correct singlehandedly, has serious ramifications for the quality of our governance. It contributes to a shortage of fresh ideas with broad public appeal, a lack of political compromise, and

²⁵ See Jennifer Bislam, *Low voter turnout in NYC may reflect “lost faith in the system”*, CBS NEWS NEW YORK (Nov. 7, 2023, 9:03 PM), <https://www.cbsnews.com/newyork/news/low-voter-turnout-in-nyc/>; Carl Campanile, *NYC’s 2023 primary election had less than 200K voters cast ballots — with only 5% of Democratic Bronx voters showing up: analysts*, N.Y. POST (June 28, 2023, 6:55 PM), <https://nypost.com/2023/06/28/nycs-2023-primary-election-had-less-than-200k-voters-cast-ballots-analysts/>.

²⁶ New York City Council, *Council Members & Districts*, (last visited Jan. 5, 2024), <https://council.nyc.gov/districts/>.

²⁷ See, e.g., Chris Sommerfeldt, *NYC’s next comptroller, public advocate are progressives who could be thorns in Eric Adams’ side*, N.Y. DAILY NEWS (Nov. 2, 2021, 9:56 PM), <https://www.nydailynews.com/2021/11/02/nycs-next-comptroller-public-advocate-are-progressives-who-could-be-thorns-in-eric-adams-side/>.

²⁸ DRUTMAN & STRANO, *supra* note 14, at 25–30.

²⁹ DRUTMAN & STRANO, *supra* note 11, at 9.

³⁰ *Id.* at 7.

³¹ *Id.* at 9.

representation that does not accurately track constituents' preferences and values.³² Considering that, in the 2022 federal midterm elections, 84 percent of U.S. House elections were either uncontested or decided by 10 or more points,³³ it is little wonder why Congress suffers from frequent political logjams and inaction. Members and parties have little incentive to stand out or obtain results for their constituents because they are elected nearly entirely on the basis of party affiliation. The threat of a genuine electoral challenge would instead impel members of Congress, senators, and their parties to be more responsive to the needs and preferences of voters.

Compared with New York's fully closed primaries, Wisconsin's current primary system no doubt opens greater possibilities for political competition, but this does not mean it is sufficient to obtain the quality of representation and outcomes that would best match the values and preferences of Wisconsinites in their various districts and at large. Though a wide range of impactful electoral reforms are available to lawmakers, RCV alone is, as CATO Institute senior fellow Walter Olson writes, a "modest procedural reform aimed at somewhat improving the match between voter preferences and electoral outcomes, with implications that are neutral as between left and right."³⁴

Final-Five Voting: A More Comprehensive Reform

In contrast to RCV's ability to be incorporated in general elections and various primary systems, Final-Five voting is a combination of three specific reforms: (1) a "nonpartisan primary," in which all qualifying candidates appear, regardless of party, in a preliminary election open to all registered voters, who choose a single candidate using a non-ranked vote; (2) the top five primary vote-getters, regardless of party, advance to a general election where; (3) voters then use IRV to elect a single winner with a majority of final-round votes.³⁵ Proposing changes to both Wisconsin's primary system and method of electing its members of the U.S. House and Senate, Assembly Bill 563 represents a far more sweeping reform compared with the introduction of IRV alone, while retaining single-member House districts as currently required by federal law.³⁶

³² See, e.g., KATHERINE M. GEHL & MICHAEL E. PORTER, WHY COMPETITION IN THE POLITICS INDUSTRY IS FAILING AMERICA, 2–6, 45 (2017), <https://www.hbs.edu/competitiveness/Documents/why-competition-in-the-politics-industry-is-failing-america.pdf>.

³³ Madison Fernandez, *Competitive congressional districts decline*, POLITICO (Feb. 27, 2023, 10:00 AM), <https://www.politico.com/newsletters/weekly-score/2023/02/27/competitive-congressional-districts-decline-00084506> ("Nationally, more races are getting decided by a wide margin. Eighty-four percent of House seats last year were decided by 10 or more points or were uncontested, and the average margin of victory in contested races was 28 points.").

³⁴ Walter Olson, *Why Conservatives Shouldn't Fear Ranked Choice Voting*, CATO INST. (April 27, 2023), <https://www.cato.org/commentary/why-conservatives-shouldnt-fear-ranked-choice-voting>; for another leading right-of-center commentator on the importance of electoral reforms, see Kevin R. Kosar, *Could election reform in DC help conservatives embrace it nationwide?*, THE HILL (Aug. 8, 2023, 8:30 AM), <https://thehill.com/opinion/campaign/4141399-could-ranked-choice-voting-in-dc-help-conservatives-embrace-it-nationwide/>.

³⁵ JOHN KETCHAM, NYC ELECTORAL REFORM: HOW TO INCREASE POLITICAL COMPETITION AND REVITALIZE LOCAL DEMOCRACY 24 (Manhattan Inst. 2022); see also Nat'l Inst. Standards & Tech, *Election Terminology Glossary: ranked choice voting*, (last visited Jan. 5, 2024), <https://pages.nist.gov/ElectionGlossary/>.

³⁶ 2 U.S.C. § 2c.

Under Wisconsin's current "open primary" system, voters choose which party's primary they wish to participate in, thereby choosing that party's nominees for various offices.³⁷ By definition, a "primary" is a process whereby voters select a party's nominee,³⁸ making FFV's "top-five primary" not a true primary. Instead, it reduces the larger pool of candidates who run initially to a smaller, more manageable five in the general election, and is therefore better termed a "qualifying-round" election.³⁹

All candidates compete in this preliminary qualifying round, regardless of political party, so multiple candidates from the same major party can compete against one another, as well as against minor-party and independent candidates, in the general election. Given that many elections have at least one or two clear front-runners, the third, fourth, and fifth qualifying-round vote-getters should secure general-election spots with relatively small shares of the vote—around 10 percent, according to a report by members of the American Political Science Association.⁴⁰ FFV general elections should, therefore, routinely feature third-party and independent-candidate competition.⁴¹

And because of the relatively minor effects that IRV has produced as a standalone reform, FFV's main mechanism to enable greater political competition is not IRV, but the top-five primary. In states that use a similar primary system, such as in California, Washington, and Louisiana, only the top two vote-getters advance to the general election.⁴² There is no spoiler effect in these two-candidate general elections. The use of IRV in FFV general elections results from the latter's feature of advancing more than two candidates from the qualifying-round election.

Alaska is currently the only state to use a variant of FFV, "Final-Four voting" (in which the top-four vote getters from the qualifying-round election advance), demonstrating that the system has been tried in a real-life setting. The results of its 2022 congressional special election have sometimes been characterized as unfair because the two Republican candidates together earned approximately 60 percent of first-preference votes, yet the Democratic candidate won after one of the Republican candidates was eliminated and his votes were reallocated to his supporters' second-ranked choices.⁴³ In truth, Alaska's voters have (like Maine's) long expressed

³⁷ See, e.g., Emily Brooks, *Republicans rage against ranked choice voting after Alaska election*, THE HILL (Sept. 1, 2022, 4:29 PM), <https://thehill.com/blogs/blog-briefing-room/news/3624553-republicans-rage-against-ranked-choice-voting-after-alaska-election/>.

³⁸ Libr. Cong., *Political Primaries: How Are Candidates Nominated?*, (last visited Jan. 5, 2024), <https://www.loc.gov/classroom-materials/elections/presidential-election-process/political-primaries-how-are-candidates-nominated/>.

³⁹ Ketcham, *supra* note 35, at 24; LEE DRUTMAN, WHAT WE KNOW ABOUT CONGRESSIONAL PRIMARIES AND CONGRESSIONAL PRIMARY REFORM 59 (2021), <https://www.newamerica.org/political-reform/reports/what-we-know-about-congressional-primaries-and-congressional-primary-reform/implications-for-top-four-five-voting/>.

⁴⁰ APSA PRESIDENTIAL TASK FORCE ON POLITICAL PARTIES, MORE THAN RED AND BLUE: POLITICAL PARTIES AND AMERICAN DEMOCRACY 144 (2023), <https://protectdemocracy.org/wp-content/uploads/2023/07/APSA-PD-Political-Parties-Report-FINAL.pdf>.

⁴¹ *Id.*

⁴² See, e.g., Dan Ordorica, *Blanket Primaries or Ranked-Choice? Why Not Both?*, BOSTON U. SCH. L. DOME (Apr. 20, 2019), <https://sites.bu.edu/dome/2019/04/20/blanket-primaries-or-ranked-choice-why-not-both/>.

⁴³ Igor Derysh, "Scam to rig elections": Tom Cotton fumes over Sarah Palin loss as GOP fans cry "stolen election", SALON (Sept. 1, 2022, 9:30 PM), <https://www.salon.com/2022/09/01/scam-to-rig-elections-tom-cotton-fumes-over-sarah-palin-loss-as-fans-cry-stolen-election/>.

idiosyncratic political preferences, and party labels have not carried the same overwhelming significance as in other states.⁴⁴ FFV simply allowed voters to express these more nuanced preferences in a way that plurality voting does not, given its incentives to vote strategically for the voter's perceived lesser of two evils offered by the major parties.

In New York City, the muted impact of IRV has impelled electoral-reform advocates to create a movement—FFV in NYC—to bring Final-Five voting to New York (I served on the group's launch committee).⁴⁵ Last year, the editorial board of the *New York Daily News* endorsed FFV,⁴⁶ as have a number of advocacy groups that cut across ideological and partisan lines.⁴⁷ If IRV were sufficient to deliver robust turnout and political competition, these calls for further reform would not have gained such traction.

Suggestions for Improvement and Conclusion

Elections matter, not only to give voters a meaningful choice among competing ideas and candidates, but also to assemble an effective and democratically responsive legislature. Despite criticism, political parties play a crucial role in coordinating legislative votes, maintaining cohesion among lawmakers, and providing voters with identifiable political brands.⁴⁸ But Assembly Bill 563 currently allows U.S. House and Senate primary candidates to select their affiliated political party, even if the party does not support such an affiliation.

Voters ought to hold accountable not only candidates, but parties too. As the bill is currently written, voters will not know whether the candidate's party affiliation on the primary ballot can be understood as having earned the party's endorsement. Assembly Bill 563 consequently requires printing the following notice on ballots: "A candidate's designation of a political party affiliation on this ballot does not constitute or imply the nomination, endorsement, or selection of the candidate by that political party."

This uncertainty between party labels and official party support may impede voters' ability to hold parties accountable for winners' results in office. It may also introduce greater unpredictability in Congress, as candidates may not feel beholden to support legislation

⁴⁴ LEE DRUTMAN, MORE PARTIES, BETTER PARTIES 74 (2023), <https://www.newamerica.org/political-reform/reports/more-parties-better-parties/4-the-contemporary-choice-will-we-repeat-the-mistakes-of-the-past-or-build-something-better-for-the-future/> ("The three statewide elections in 2022 each yielded a different result. Alaskans elected a moderate Democrat to the House in its one statewide race, a moderate Republican to the Senate, and a conservative Republican to the governorship. This likely represents Alaska's somewhat idiosyncratic politics.").

⁴⁵ Jeff Coltin, *Andrew Yang, political outsiders, want to get rid of partisan primaries in NYC*, CITY & STATE NY (Jan. 12, 2023), <https://www.cityandstateny.com/politics/2023/01/andrew-yang-political-outsiders-want-get-rid-of-partisan-primaries-nyc/381753/>.

⁴⁶ New York Daily News Editorial Board, *High five: Final Five voting is a big improvement on NYC's current ranked-choice voting system*, N.Y. DAILY NEWS (Jan. 14, 2023, 9:05 AM), <https://www.nydailynews.com/2023/01/14/high-five-final-five-voting-is-a-big-improvement-on-nycs-current-ranked-choice-voting-system/>.

⁴⁷ Final Five Voting NYC, *Endorsements of Final Five Voting*, (last visited Jan. 5, 2024), <https://www.finalfive.nyc/endorsements>.

⁴⁸ See JACK SANTUCCI, MORE PARTIES OR NO PARTIES: THE POLITICS OF ELECTORAL REFORM IN AMERICA 39 (2022); APSA PRESIDENTIAL TASK FORCE ON POLITICAL PARTIES, *supra* note 40, at 144.

advanced by the party that nominated them and supported their election to victory. Wisconsin's parties will likely find it harder to build coherent political brands.

Instead, I suggest that the Assembly Committee consider allowing internal party mechanisms to select a party's endorsees in qualifying-round primaries, perhaps up to two endorsements per party per contest.⁴⁹ Empowering party insiders is less of a concern due to the increased political competition that FFV encourages in general elections. Insiders' endorsees must appeal to enough general-election voters to secure a majority of the last-round votes, giving parties an incentive to endorse broadly appealing candidates.⁵⁰ Voters will be able to hold political parties accountable for their endorsees' performance once in office.

In conclusion, electoral reform promises to reinvigorate American democracy through more robust political competition. FFV is one viable option for doing so. I commend the Assembly Committee on Campaigns and Elections for considering the substance of Assembly Bill 563, and I appreciate the opportunity to provide this testimony.

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⁴⁹ See KETCHAM, *supra* note 35, at 25–26.

⁵⁰ See *id.*